

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
HARRISONVILLE TELEPHONE COMPANY)	Transmittal No. 33
)	
Tariff F.C.C. No. 2)	

REPLY TO PETITION OF AT&T CORP.

Harrisonville Telephone Company (“Harrisonville”), by its attorney and pursuant to Section 1.773(b)(1)(iii) of the Commission’s Rules, hereby submits its reply to the petition filed by AT&T Corp. (“AT&T”) on April 23, 2004, requesting the Commission to reject, or to suspend and investigate, the mid-course traffic sensitive access rate adjustments proposed by Harrisonville in its Transmittal No. 33. These proposed tariff changes were issued on April 16, 2004, and if not rejected or suspended, will become effective on May 1, 2004.

Transmittal No. 33 Should Not Be Suspended and Investigated

Harrisonville is an independent local exchange carrier (“ILEC”) that serves approximately 20,000 access lines in a single Illinois study area. It is within the category of ILECs that are described as subset 3 carriers in Section 69.602(a) of the Rules. Therefore, Harrisonville is eligible to issue and change its Tariff F.C.C. No. 2 pursuant to the optional method of filing set forth in Section 61.39 of the Rules.

As the Commission is well aware, the optional Section 61.39 filing method was adopted to permit small ILECs to file their own interstate traffic sensitive access rate tariffs, while eliminating unnecessary direct regulatory burdens of such tariff filings and thereby decreasing the regulatory costs thereof. Regulation of Small Telephone Companies, 2 FCC Rcd 3811 (1987), at para. 3. At the same time, the Commission determined that permitting small ILECs to

file access tariffs using historical cost and demand data to set rates not only reduces regulatory burdens and costs, but also prevents carriers from implementing excessive rates. *Id.* at para. 13. Essentially, historical cost and demand data constitute readily verifiable and auditable pictures of the ILECs actual recent operating conditions and experience, and are not subject to the potential inaccuracies of projected cost and demand data.

Pursuant to Section 1.773(a)(1)(iii) of the Rules, Section 61.39 tariff filings like Harrisonville's Transmittal No. 33 are considered *prima facie* lawful, and may not be suspended by the Commission unless the petition requesting suspension shows that cost and demand studies were not provided upon reasonable request. Here, AT&T has made no claim that Harrisonville did not provide cost and demand studies to AT&T upon reasonable request. In fact, Harrisonville provided: (a) its rate development and rate changes to AT&T by facsimile on April 20, 2004; (b) its Part 36 and Part 69 studies to AT&T by overnight delivery on April 21, 2004 (sent April 20 for delivery on April 21); (c) its demand data to AT&T by email on April 21, 2004; and (d) its rate of return data to the Commission when requested on April 26, 2004 (which Harrisonville understands was then provided by the Commission to AT&T). Harrisonville's prompt provision of its cost and demand studies to AT&T satisfies the conditions for consideration of Transmittal No. 33 as *prima facie* lawful, and precludes suspension of the filing.

Even if Harrisonville had not promptly satisfied the information provision requirements of Section 1.773(a)(1)(iii), suspension and investigation of Transmittal No. 33 would violate the regulatory burden and cost minimization goals of the Section 61.39 method, as well as constituting a gross waste of the Commission's tariff administration resources. Therefore, the alternative of suspension and investigation should be denied, and Harrisonville's Transmittal No.33 should be allowed to take effect on May 1, 2004, or rejected outright.

Transmittal No. 33 Should Be Allowed to Take Effect

Where, as here, the information provision requirements are satisfied, Section 1.773(a)(1)(iii) permits suspension or rejection of a *prima facie* lawful Section 61.39 transmittal only when a petitioner like AT&T demonstrates the existence of ALL four of the Commission's conditions for rejection or suspension. These conditions are: (1) that there is a high probability the tariff would be found unlawful after investigation; (2) that any unreasonable rate would not be corrected in a subsequent filing; (3) that irreparable injury will result if the tariff filing is not suspended; and (4) that the suspension would not otherwise be contrary to the public interest. AT&T has not demonstrated any of these conditions, and therefore has not met its burden of proof regarding suspension or rejection of Harrisonville's proposed mid-course revisions.

As indicated by Attachment 1 hereto, Harrisonville's Transmittal No. 33 contains a total of sixty-four (64) separate rate changes. These are comprised of changes to nine (9) recurring switched access rates, and fifty-five (55) recurring special access rates. Of these rate changes, only two (2) constitute rate increases, while the remaining sixty-two (62) are rate decreases. Put another way, Harrisonville has proposed to increase its switched access rates for tandem switched transport and the end office information surcharge, while reducing its local switching rate and six of its direct trunked transport rates. It has also proposed substantial reductions ranging from 12.82% to 64.34% for fifty-five (55) of its special access rates

AT&T objects to Transmittal No. 33 solely because of the proposed increase to Harrisonville's tandem switched transport rate. AT&T does not challenge Harrisonville's proposed increase of its end office information surcharge, nor does it acknowledge Harrisonville's seven proposed switched access rate reductions and/or its fifty-five proposed special access rate reductions.

AT&T's petition alleges that Harrisonville "has increased – without explanation – its total interstate revenue requirement by \$857,186, nearly an 18% increase since July 1, 2003, which results in a local transport revenue requirement that is higher by \$376,501, and a 117.28% increase in the switched access tandem transport rate from \$0.00492 to \$0.01069" (AT&T Petition, p.2). AT&T's use of the term "without explanation" is both curious and inaccurate, for Harrisonville furnished its rate development, Part 36/69 studies, and demand data to AT&T on April 20 and 21 before its petition was filed.

As a Section 61.39 method user, Harrisonville normally files its access tariff revisions in June of odd-numbered years such as 2001, 2003 and 2005. However, it became aware this year that its switched traffic sensitive services (and particularly its tandem switched transport services) were earning far less than the allowable 11.25% rate of return, while its special access services were earning more than 11.25%. Specifically, as indicated by Attachment 5 hereto, Harrisonville's traffic sensitive services had a rate of return of only 1.47% during 2003¹, while its special access services earned 26.80% during 2003. Therefore, Harrisonville decided to make a mid-course correction to increase its tandem switched transport rate (which it believed was primarily responsible for its low traffic sensitive service earnings) and decrease its special access rates (as well as some of its other traffic sensitive switched access rates).

AT&T's focus upon increases in Harrisonville's revenue requirements overlooks the critical fact that rates and rate changes are affected by changes in demand as well as changes in revenue requirements. As indicated by Attachment 3 hereto, Harrisonville's rates and earnings have been adversely impacted by the decreases in switched access minutes that plague major

¹ The Commission should also note that Harrisonville's rate of return for traffic sensitive switched access services has decreased from 36.59% in 2001 to 15.06% in 2002 to 1.47% in 2003. Likewise, its overall rate of return for traffic sensitive switched access and special access services has decreased from 36.44% in 2001 to 18.14% in 2002 to 9.99% in 2003.

portions of the ILEC industry. Its tandem switched transport minutes have dropped from 75,206,308 in 2001 to 70,284,555 in 2003, including an 8.15% decrease from 2002 to 2003. Meanwhile, the demand for Harrisonville's special access services has increased from 235 circuits in 2001 to 342 circuits in 2003. These demand changes are every bit as important to Harrisonville's proposed mid-course adjustments as revenue requirement changes. And yet, AT&T gives no indication that it has considered them.

Effective December 31, 2002, Harrisonville updated its Central Office Equipment Categorization Study and its Cable and Wire Facilities Categorization Study. As indicated by Attachment 4 hereto, the adjustments arising from these updated studies produced significant changes in some of Harrisonville's Part 36 categories for central office equipment and cable and wire facilities between 2001 and 2002. These changes were necessary to bring Harrisonville's cost studies and rates up-to-date, and improve their accuracy. The Commission should note that, after the corrective adjustments in 2002, these accounts showed relatively normal and expected changes during 2003.

Harrisonville also notes that its recent revenue requirement changes are not due to significant shifts between the interstate and intrastate jurisdictions. As indicated by Attachment 6 hereto, the percent of Harrisonville's total company revenue requirement assigned to the interstate jurisdiction in its Part 36/69 studies has been 42.90% in 2001, 34.32% in 2002, and 35.04% in 2003.

As indicated in Attachment 2, Harrisonville's revenue requirement for switched access local transport has increased from \$236,186 in 2001 to \$520,338 in 2002 to \$754,989 in 2003. These increases, plus the concurrent decreases in demand minutes, have necessitated the proposed mid-course tandem switched transport rate increase.

Unlike larger carriers, Harrisonville and the other small ILECs that use the Section 61.39 method may not set rates on the basis of projected revenue requirements and/or projected demand. Hence, Harrisonville's proposed increase in its tandem switched transport rate from \$0.00492 per minute to \$0.01069 per minute is based upon its actual cost and demand to provide the service during 2003. The basing of the rate upon such recent and actual experience, the data for which can be readily verified, makes it very improbable that the proposed rate would be found unlawful after investigation.

If the proposed Transmittal No. 33 rate adjustments are permitted to go into effect on May 1, 2004, they will remain in effect until no longer than July 1, 2005. Harrisonville and other Section 61.39 method users will be required to re-examine their rates in 2005, and submit updated bi-annual revisions during June 2005 to become effective July 1, 2005. Assuming arguendo that the proposed tandem switched transport rate proves to be "unreasonable" for any reason, it will be corrected in the June 2005 filing.

Neither AT&T nor any other interstate access customer will be irreparable harmed by the two rate increases or the sixty-two rate decreases proposed by Harrisonville. Even assuming that it were entirely unjust and unreasonable (which is not the case), the \$.00577 per minute tandem switched transport rate increase proposed by a small carrier like Harrisonville is unlikely to change a single digit on any line of any of AT&T's 2004 or 2005 financial statements. The rates and dollar amounts in question are wholly immaterial to a company the size of AT&T.

Finally, there are no discernable public interest reasons for the Commission to suspend or reject Harrisonville's filing. Rather, the Commission should encourage Harrisonville and other Section 61.39 filers to make mid-course corrections that more equitably distribute their access costs among their access customers based upon updated cost and demand data.

Hence, AT&T has satisfied none of the four condition in Section 1.773(a)(1)(iii) for rejection of suspension of Harrisonville's filing. The Commission should deny AT&T's petition in its entirety, and allow Harrisonville's Transmittal No. 33 to go into effect on May 1, 2004.

Conclusion

Harrisonville's Transmittal No. 33 constitutes a just and reasonable mid-course correction that increases two traffic sensitive switched access rates and decreases sixty-two traffic sensitive switched access and special access rates. Harrisonville has promptly and fully met the information provision requirements of Rule Section 1.773(a)(1)(iii), and is thus entitled to have its Section 61.39 filing considered *prima facie* lawful and not subject to suspension and investigation. Moreover, the information provided by Harrisonville demonstrates that its adjustments are based upon underearnings and overearnings during 2003, and that such earnings were significantly impacted by demand changes in addition to revenue requirement changes. The tandem switched transport rate increase challenged by AT&T is fully supported by actual 2003 cost and demand data, and is just and reasonable. It would not serve the public interest for the Commission to reject this proposed rate increase, or any of Harrisonville's other proposed rate changes.

Respectfully submitted,
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By /s/ Gerard J. Duffy
Gerard J. Duffy

Its Attorney

Dated: April 29, 2004

CERTIFICATE OF SERVICE

I, Gerard J. Duffy, hereby certify that a copy of the foregoing “REPLY TO PETITION OF AT&T” has been served this 29th day of April, 2004, via facsimile, upon the following:

Lawrence J. Lafaro
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/s/ Gerard J. Duffy
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